

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL CRO 1/2024
(Please use this reference in your reply)

27 August 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 52/4, 51/8, 52/9 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged rejection of Mr. Vladislav Arinichev's asylum application, as well as his reported detention and potential deportation to Russia, where he allegedly faces prosecution for his anti-war activism.**

Mr. **Vladislav Arinichev** is a Russian anti-war activist and human rights defender who advocates for the rights of asylum-seekers in Croatia.

According to the information received:

Persecution in Russia

Mr. Vladislav Arinichev was persecuted in Russia for his peaceful anti-war activism.

On 11 March 2022, he was found guilty of an administrative offence under article 20.3.3 of the Code of Administrative Offences ("public actions aimed at discrediting the use of the armed forces of the Russian Federation") for an anti-war protest and fined 50 000 RUB (527 EUR).

On 28 March 2022, he was found guilty of an administrative offence under article 20.3.4 of the Code of Administrative Offences ("calls for sanctions") for posting an anti-war video on YouTube and fined 35 000 RUB (370 EUR).

Mr. Arinichev continued making anti-war YouTube videos, putting him at risk of criminal prosecution for a repeated offence under article 284.2 ("calls for sanctions") and article 280.3 ("public actions aimed at discrediting the use of the armed forces of the Russian Federation") of the Criminal Code, as well as under article 207.3 ("public dissemination of knowingly false information on the use of the armed forces of the Russian Federation") of the Criminal Code, which does not require a previous administrative offence. As a result of these serious risks, Mr. Arinichev left Russia and applied for international protection in Croatia on 12 December 2022.

In August 2023, it became known that he is accused under article 205.2 of the Criminal Code (“public incitement to terrorist activities, public justification of terrorism, or propaganda of terrorism”) in Russia and faces imprisonment of up to seven years, allegedly in retaliation for his peaceful anti-war activism. He was added to the list of “extremists” and “terrorists” and placed on the wanted list in Russia.

Rejection of asylum application and detention in Croatia

In Croatia, Mr. Arinichev started advocating for the rights of asylum-seekers.

On 10 September 2023, he recorded a video highlighting the poor conditions of asylum-seekers at the Reception Center for Asylum Seekers in Zagreb, managed by the Ministry of the Interior. He reportedly sent the video to the Ministry of the Interior and other national authorities and posted it on YouTube. He was subsequently informed by the Reception Center official that showing faces in the publicly available video violated people’s privacy and right to personal data protection and endangered their safety, so he blurred faces and re-uploaded the video with blurred faces on 14 September 2023, deleting the original video. The video allegedly improved the situation at the Reception Center. However, on 6 October 2023, the Security and Intelligence Agency designated him a “threat to the national security and public order of the Republic of Croatia” based on the recording of this video and the criminal accusations in Russia. This, in turn, led to the Ministry of the Interior’s decision on 25 June 2024 to reject his application for international protection, despite him meeting the conditions for asylum.

On 7 April 2024, he recorded and published a YouTube video explaining the asylum procedure in Croatia.

On 19 June 2024, he participated in a conference on the situation of asylum-seekers held in Zagreb and was allegedly planning to prepare a report for the Government of Croatia.

On 4 July 2024, he held a single-person protest in Zagreb, on St. Mark’s Square, to attract public attention to the alleged human rights violations in other asylum-seekers’ cases by the Security and Intelligence Agency. He wore a t-shirt with a provocative inscription “Fuck SOA [Security and Intelligence Agency]” and held a poster with examples of cases with alleged violations. As a result, he was apprehended and sentenced to 15 days in detention for insulting Croatian authorities, after which he was placed at the Reception and Transit Center for Foreigners in Trilj for three months, due to the same offence.

Mr. Arinichev remains at the Reception and Transit Center for Foreigners in Trilj. The rejection of his asylum application and detention are currently being challenged in court.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern regarding the alleged rejection of Mr. Vladislav Arinichev’s asylum application and his detention, both of which appear to be a

consequence of his advocacy for the rights of asylum-seekers in Croatia and the exercise of his freedom of expression. Additionally, we are concerned about his potential deportation to Russia, where he allegedly faces prosecution for his peaceful anti-war activism.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information about the factual and legal basis for the rejection of the asylum application of Mr. Vladislav Arinichev and for his detention, and explain how these actions are compatible with your Excellency's Government's international human rights obligations.
3. Please indicate the steps taken to ensure that Mr. Arinichev does not suffer any kind of reprisals, including detention or the rejection of his visa application, for his work as a human rights defender or his exercise of the right to freedom of expression. If this has been proved not to be the case, please explain why.
4. Please provide information about adequate safeguards against Mr. Vladislav Arinichev's refoulement.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Further, we would like to inform that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Matthew Gillett
Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

We would like to remind your Excellency's Government about the principle of non-refoulement that forms an essential protection under international human rights and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment, or other serious human rights violations. As the Working Group on Arbitrary Detention has reiterated in its jurisprudence, the risk of arbitrary detention in the receiving State must be taken into consideration in the decision to extradite, deport, expel or otherwise hand a person over to the authorities of another State.

It is also an explicit obligation assumed by your Excellency's Government through article 33 of the Convention Relating to the Status of Refugees and its Protocol of 1967, joined by Croatia by succession on 12 October 1992, to refrain from expelling or returning any person who may be a refugee or otherwise be in need of international protection to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.

We would also like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights ("ICCPR"), joined by Croatia by succession on 12 October 1992. Article 19 requires the States parties to guarantee the right to freedom of expression, including the right to seek, receive, and impart information and ideas of all kinds and it applies online as well as offline. As interpreted by the Human Rights Committee in General comment No. 34 (CCPR/C/GC/34), such information and ideas include, *inter alia*, commentary on one's own and on public affairs and discussion of human rights (paragraph 11). All forms of expression and means of their dissemination are protected, including, *inter alia*, spoken and written expression, posters, banners, dress, as well as electronic and internet-based modes of expression (paragraph 12). This includes even expression that may be regarded as deeply offensive, although such expression may be restricted if done in full compliance with the provisions of article 19 (3) and article 20 (paragraph 11).

Under these standards, any restrictions to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards, restrictions must be provided for by law, conform to the strict tests of necessity and proportionality and be directly related to the specific need on which they are predicated. Under these standards, restrictions must be provided for by law, conform to the strict tests of necessity and proportionality and be directly related to the specific need on which they are predicated. Article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (paragraph 23). Nor, under any circumstance, can an attack on a person, because of the exercise of their freedom of opinion or expression,

including arbitrary arrest, be compatible with article 19 (Id.). It is the States parties' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (Id.). Recognizing how persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that "all such attacks should be vigorously investigated in a timely fashion, the perpetrators be prosecuted, and the victims receive appropriate forms of redress" (Id.).

With regard to article 20 of the ICCPR, cited in the General comment as another legitimate ground to restrict offensive expression, it prohibits the propaganda for war and advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, none of which appear relevant in this case.

We would also like to refer your Excellency's Government to article 9 of the International Covenant on Civil and Political Rights (ICCPR), which provides that no one shall be subjected to arbitrary arrest or detention. As interpreted by the Human Rights Committee in general comment No. 35 (CCPR/C/GC/35), the notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality (paragraph 12). According to the same General comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of peaceful assembly. It states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others". Article 22 of the ICCPR protects the right to freedom of association with others.

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote, and implement all human rights and fundamental freedoms.

Likewise, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 6 (a)-(c), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial, or administrative systems; freely publish, impart, or disseminate to others views, information, and knowledge on all human rights and fundamental freedoms; and to study, discuss, form, and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 9 (1), which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;
- Article 12 (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Finally, we would like to draw your Excellency's Government's attention to the recent report of the Special Rapporteur on the situation of human rights defenders, dedicated to human rights defenders working on the rights of refugees, migrants, and asylum-seekers (A/77/178).